

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,437

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Appeal of )

)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare terminating medicaid coverage for her husband. The issue is whether the terms of a trust from which the petitioner receives monthly income preclude the attribution of that income as available to the petitioner's husband.

FINDINGS OF FACT

The facts are not in dispute. The petitioner lives with her husband, a son, and two grandchildren. The petitioner receives ANFC benefits for the two grandchildren; and, until recently, the entire household received medicaid benefits.

Several months ago the Department learned that the petitioner was to begin receiving additional income of \$2,500.00 a month from her mother's estate. Based on this the Department terminated the medicaid benefits of the petitioner, her husband, and their son (the two grandchildren continue to be eligible for medicaid based on their continuing eligibility for ANFC). The petitioner concedes that she and her son are not eligible for medicaid based on the income the petitioner receives from her mother's estate. She argues, however, that her husband should be found separately eligible for medicaid because, the petitioner maintains, the terms of the trust fund that governs the estate exclude her husband from any income or benefit from that estate.

The petitioner cites the following two provisions of the trust as precluding the Department from counting this income as available to her husband:

During the lifetime of [petitioner] of the State of California the Trustee shall continue to hold, manage and control one share, collect the income therefrom and pay to or for the benefit of [petitioner] and/or any of the issue of [petitioner] such sums of income and/or principal as the Trustee may in her sole discretion determine. Income not so expended shall be accumulated and added to the principal of the Trust Property.

and

**SPENDTHRIFT PROVISIONS:** The purpose of the income and other provisions of this revocable Trust for the benefit of the Grantor and Beneficiary and/or the other beneficiaries named herein is to secure the beneficiary in each case from want, and so far as possible to insure them a reasonable living under all circumstances, free from the accidents of mismanagement and improvidence, and free from the interest of any present and/or future spouse of any of said beneficiaries. The income and other beneficial interests of any said beneficiaries shall not be liable for their debts and shall not be assigned or hypothecated in any manner and shall not be anticipated, encumbered or otherwise disposed of by such beneficiaries, and shall not be taken on execution in law, nor be reached by creditor's bill.

As further support for her position the petitioner cites the following letter from the attorney who is the trustee of her mother's estate:

You have asked us to evaluate whether your spouse, [name] has any interest in the funds which are held for your benefit, in trust by [name] as Trustee, pursuant to the [name] Revocable Living Trust, the [name] Revocable Living Trust or the Estate of [name].

The funds which are held in trust for your benefit permit the Trustee to distribute income and/or principal in her discretion to you and/or your issue only.

Furthermore, the spendthrift provisions contained in the two Revocable Trust Agreements and the Last Will & Testament of [name] are quite similar. It is stated that "the purpose of the income and other provisions of this revocable Trust for the benefit of . . . Beneficiary [petitioner] and/or the other beneficiaries named herein is to secure the beneficiary in each case from want, and so far as possible to insure them a reasonable living under all circumstances, free from the accidents of mismanagement and improvidence and free from the interest of any present and/or future spouse of any of said beneficiaries."

Each of the aforementioned documents prohibit a beneficiary from assigning or hypothecating his or her beneficial interests of the trust fund.

### ORDER

The Department's decision is affirmed.

### REASONS

Medicaid Manual § M350 defines "income" as follows<sup>(1)</sup>:

Income is defined as any cash payment which is not considered a resource which is received by a member of the Medicaid group or an individual who is a financially responsible relative of a member of

the Medicaid group. Sources of income include, but are not limited to, earnings from employment or self-employment, and unearned income (pensions, benefits, interest, or return on investments, contributions, assistance from other agencies, etc.). . . .

In this case, neither the language of the trust nor the letter of the trustee support the petitioner's position that the income from the trust is not available to her to use to meet her husband's medical needs, should they arise. The terms of the trust only require the trustee to pay the income from the trust to the petitioner for the petitioner's "benefit". The trust does not prevent the petitioner from then using this money to meet her family's, including her husband's medical needs. Indeed, it would be a cruel and perverse interpretation of the term "for the benefit of (the petitioner)" to conclude that the petitioner and the trustee would be constrained to allow the petitioner's husband to go without necessary medical care rather than spend money from the trust for his (and, thus, presumably her) benefit. Neither the plain language of the trust nor common sense and human decency supports such a restrictive reading of the trust.

It must be concluded that the income from the trust is available to the petitioner to meet her family's medical needs. The Department's decision is, therefore, affirmed.

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1. The Department also cites a federal regulation that allows states to count the income and resources of "spouses . . . even if they are not actually contributed". 42 C.F.R. § 435.822(b)(2). Thus, it is arguable that this income could be counted even if it could not be used to meet the medical needs of the petitioner's husband. However, since it is concluded that the trust is available to the husband in this regard (see infra), the Board need not reach the issue of whether "availability" is a necessary element of W.A.M. § 350.